

**PLANNING COMMISSION (AND STAFF) RECOMMENDATIONS FOR CODE CHANGES
AT FEBRUARY 20, 2018 CITY COUNCIL HEARING**

(deletions from existing code are in ~~strikeout~~ and additions in ***bold italics***)

Section 153:003 – Definitions (This section to be redesignated as 153.036 to move to rear of code)

Building Height: ~~the vertical distance from the average contact ground level of the building to the highest point of the building.~~ ***See “Height of Building” definition.***

Development: any manmade change to improved or unimproved tracts of land, including, but not limited to, construction of buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations located within the area.

Interim: existing, serving, or effective for not more than 3 years and having an improvement value of not greater than \$30,000.

Permanent: Not interim development.

~~Food Cart/Food Trailer: a mobile kitchen and food service establishment that is vehicle-mounted or wheeled and is capable of being readily moved, set up on the street to facilitate the sale and marketing of prepared food to people from pedestrian traffic. Food carts and Food Trailers can be found selling food of just about any variety. Food carts and Food Trailers either allow the vendor to sit or stand inside and serve food through a window, or have all of the room inside the cart for storage and to house the cooking machinery, usually some type of grilling surface. The cart style is determined principally by the type of food served at the cart. Some food carts are towed by another vehicle or are part of a vehicle, while some alternatively are pushed by a human. Food Carts/Food Trailers include the following:~~

~~Conventional Unrestricted Units which are enclosed trucks, trailers, buses with open foods—mobile taquerias, barbecue trailers, snow cone units, grilled chicken buses.~~

~~Conventional Restricted Units includes trucks, trailers, vans with packaged foods only prepared at an approved commissary.~~

~~Ice cream tricycles and push carts (Individually packaged ice cream)~~

~~Unrestricted fixed location and park vendor units such as hot dog and other open foods carts~~

~~Ice cream trucks and vans (Individually packaged frozen desserts)~~

Grade: ~~the average elevation of the existing ground at the centers of all walls of the existing building.~~
See “Grade (Natural)” definition.

Mobile Unit Food and Beverage Carts: *A mobile unit must be originally manufactured to serve as a food cart or food truck, not retrofitted from another vehicle or structure intended for a different function. Mobile vehicles, as well as units or carts that can be pushed or pulled down a street or highway, such as a trailer, designed and built for the mobile food and beverage industry shall be allowed. No open carts are allowed. Food cart units permitted on a property within the Tillamook Urban Growth Boundary shall meet the following standards as determined by an inspection by the building official. It shall have a State insignia indicating compliance with Oregon State Construction Standards in effect at the time of manufacture, and including compliance for reconstruction or equipment installation made after manufacture. Regardless of deterioration, misuse, neglect, accident or other cause, the mobile unit shall meet the State standards for construction as evidenced by the insignia.*

Mobile Unit Food and Beverage Cart Users: Owners and operators of individual and affiliated Mobile Unit Food and Beverage Carts, along with their employees.

Section 153.004 (1)(A)(1), Application for Land Use Action - Each land use action’s requirements are listed separately in the following sections of this ~~Chapter ordinance:~~

- a. Conditional Use Permit – §153.070.
- b. Land Partition – §153.072.
- c. Site Plan Review – §153.073
- d. **Determination or alteration of a Non-Conforming Use or Structure – §153.074**
- e. Variance – §153.075.
- f. Zone Change/Amendment – §153.071.

Section 153.004 (15) (D) (2), Administrative Notice - all owners of adjacent property per subsection 3 of ~~this Section~~ **S153.004**

Section 153.004 (15) (G) – Administrative Notice

In addition to the notice by mail provided to the persons listed in subsection ~~4 (14’D’)~~ above, notice of a land use request application shall be posted on the property **within 24 hours from ~~at the time the notice of application is mailed~~** ~~at least ten (10) days before any administrative decision is made.~~ The posting shall inform the public of the general nature of the request and announce that written comments and objections will be accepted by the Planning Department for ~~seven (7) days~~ **ten (10) days** from the date of posting. The notice shall also say that only those persons who respond in writing will receive a copy of the written decision and have a right to appeal that decision to the Planning Commission.

At the end of each zoning section (**153.010 through 153.019**), under ‘other required conditions’, add:

All alterations of non-conforming uses or structures are required to be taken through the review process as described in §153.074 of this development code.

Section 153.013 – (DENSITY INCREASING CONCEPTS WITHIN THE R-0 ZONE)

- (6) Lot - Requirements and Design. The following lot requirements and design standards shall be observed and apply to all new development.
- A. Lot Area: Each lot shall have a minimum area of 1,452 square feet unless otherwise allowed or required. The residential density standards of subsection B, below, shall be met.
 - B. Minimum and maximum residential density: New development shall achieve an overall density between 8 units per acre and ~~30~~ **60** units per acre. Density is calculated by dividing the number of dwelling units by the property area in acres (minus area required for street right-of-way). Decimals are rounded to the nearest whole number.
 - C. Lot Width:
 - 1) Each lot for an attached dwelling or business shall have a minimum width of twenty (20) feet;
 - 2) Each lot for a detached dwelling or business shall have a minimum width of fifty (50) feet;
 - 3) The lot width may be reduced further for rear lot development.
 - D. If the subject property is located within 500 feet of Central Commercial zoned property, there shall be no property line setback requirements.
 - E. Front Yard **in all other areas**: The front yard setback shall be a minimum of ten ~~twenty (20)~~ (10) feet. Corner lot front yard setbacks, one side must have a minimum of 10 feet. Front yard setbacks may be reduced to ten (10) feet for an enclosed porch, portico, or other architectural feature that is connected directly to a building entrance.
 - F. Side Yard **in all other areas**: There shall be a minimum side yard of five (5) feet, except for common wall dwellings or businesses as provided in "G", below. The portions of buildings or structures, which are above the 15-foot height, measured from ground level, must be inset an additional one-half foot for each foot of height exceeding fifteen (15) feet.
 - G. Rear Yard **in all other areas**. There shall be a minimum rear yard of five (5) feet, except for common wall dwellings as provided in "G", below. The portions of buildings or structures which are above the 15-foot height must be inset an additional one-half foot for each foot of height exceeding fifteen (15) feet.
- (7) Off-Street Parking. Off-Street parking shall be provided as required in §153.054, ***unless the subject property is located within 500 feet of Central Commercial zoned property and on-street parking exists or can be made available on its frontage, in which case, no onsite parking shall be required.***

Section 153.052 (12) – MOBILE UNIT FOOD AND BEVERAGE CART STANDARDS

This section applies to Mobile Unit Food and Beverage Carts. The definition for Mobile Unit Food and Beverage Carts is found in the Definitions section. All Mobile Unit Food and Beverage Carts will comply with the Oregon Health Authority requirements and all other applicable Fire and Life Safety codes.

Standards for Mobile Unit Food and Beverage Carts

- A. Users currently in operation with a valid Temporary Use permit are mobile units with at least 50 percent of sales coming from Mobile Unit Food and Beverages can be approved under the standards in effect at the time of their last permit issued. Temporary Uses currently in operation also have the option of applying under the standards in effect at the time of application.***
- B. Mobile Unit Food and Beverage Carts shall be on a paved surface such as, but not limited to concrete, asphalt, pavers and other surfaces as approved by the City Planner. If new paved surface is added to a site to accommodate a cart, the property shall still be required to comply with applicable lot coverage, impervious surface and parking lot standards.***
- C. Carts shall not occupy pedestrian walkways or required landscape areas.***
- D. Carts shall not occupy parking needed to meet the minimum bicycle or automobile parking requirement for another use. Blocking automobile access to parking spaces shall be considered occupying the spaces.***
- E. If a site where a cart is located abuts a lot with a residential use, the cart use shall meet all buffer widths required for a proposed commercial use. Buffer widths shall be allowed to overlap with setback requirements.***
- F. The use shall provide adequate vision clearance as required.***
- G. Ingress and egress shall be safe and adequate when combined with the other uses of the property as required.***
- H. Users shall not create tripping hazards in pedestrian or vehicular areas with items such as cords, cables, and pipes.***
- I. Awnings attached to Mobile Unit Food and Beverage Carts shall have a minimum of 7 feet of clearance between the ground and the awning to allow access for pedestrians under the awning.***
- J. Signage for Carts:***
 - 1. Shall comply with applicable zoning requirements with no more than seven (7) signs aggregate per property.***
 - 2. Users shall be required to post City Mobile Unit Food and Beverage Cart permits; City business licenses; and Tillamook County Health Department food service licenses in a location visible to customers.***
- K. Unless otherwise specified in this section, Mobile Unit Food and Beverage Carts shall be exempt from a finding of adequate public facilities unless it is determined that the proposed use exceeds the capacity of existing public facilities or causes unsafe conditions.***
- L. The City Planner may impose any approval conditions intended to minimize adverse impacts created by the use on surrounding property and uses.***

M. Carts are exempt from land-use district density, floor-area ratio and design guidelines and standards.

N. Carts shall meet the following dimensional requirements:

- 1. Land-use district minimum setbacks shall be met for the site perimeter.**
- 2. Carts shall not be located within 25 feet of an active driveway entrance as measured in all directions from where the driveway enters the site at the edge of the street right of way.**
- 3. Carts shall be located at least 3 feet from the right of way or back of sidewalk, whichever provides the greater distance from the right of way.**
- 4. Carts shall provide at least 5 feet between service windows or other customer service points and an active drive aisle. The distance shall be measured perpendicular to the service window/point.**
- 5. Carts shall remain at least 5 feet away from other Mobile Unit Food and Beverage Carts or Commercial Stands.**

O. Carts shall not occupy fire lanes or drive aisles necessary for vehicular circulation or fire/emergency vehicle access as determined by the City Planner.

P. Carts shall limit the visual effect of accessory items not used by customers, including but not limited to tanks, barrels and miscellaneous items, by using screening or storing them in containers to substantially limit views of such items from the street. Screening could be temporary fencing or landscaping (such as landscaping in pots or planters). Storage containers could be small sheds or storage units. Screening shall be approved by the Police Department in order to ensure surveillance of the site remains possible for crime prevention purposes.

Q. For drive-through carts, the following standards apply:

- 1. To ensure adequate distance for at least three vehicles to line up behind the vehicle ordering at the drive-through, drive-through Mobile Unit Food and Beverage Carts shall have at least 85 feet in queuing distance behind each drive-through window where sales occur. Required queuing distance may be increased as determined by the City Planner if a change in distance will promote traffic and pedestrian safety. Queuing distance shall be measured from the initial edge of the service window or point of service, along the queuing path, to where the driveway from the street crosses from the right of way into the property. The measurement method can be adjusted by the City Planner for unusual circumstances or if needed to meet the intent of this standard.**
- 2. Drive-through stacking lanes and service areas shall not be located between the street and the Mobile Unit Food and Beverage Cart.**

R. The following health and sanitation standards shall apply:

- 1. Applicants shall provide wastewater/graywater disposal documentation that indicates how the outputs will be stored (if applicable) and what wastewater/graywater disposal method will be used. The documentation shall indicate a proper disposal method that ensures fats, oils, and grease do not enter the City's wastewater infrastructure. Non-storm water discharges to the City's storm water system are prohibited.**
- 2. Carts shall ensure the availability of a restroom with hand washing facilities for employees.**

- 3. If the applicant intends to contract with a third party for wastewater/graywater disposal, a copy of the contract must be provided to the City within 30 days of receiving a permit.**
- 4. The City may require the food or beverage service operator to provide proof of payment or other documentation that wastewater and graywater are being disposed of properly.**
- S. The applicant shall provide an estimate of the parking demand on the site and provide information about how parking demand will be accommodated, such as through off-street parking or on-street parking on adjacent blocks. That analysis shall consider parking needs of other uses on the site. Off-street parking may be required by the City Planner if the applicant cannot demonstrate adequate parking is available to meet demand or it has been determined that a renewing Mobile Unit Food and Beverage Cart has experienced parking or related traffic issues on the site or on adjacent blocks.**
- T. Carts shall have lighting to ensure a safe environment for customers. If permanent lighting, such as parking lot lighting, already exists on the site, the City Planner may determine that the lighting satisfies this requirement. Otherwise, lighting (such as temporary lighting) shall be added that complies with the following:**
- 1. At a minimum, areas intended to be occupied by customers, such as areas near Mobile Unit Food and Beverage Cart service windows and customer seating, shall be illuminated when carts are in operation during hours of darkness;**
 - 2. No direct light source shall be visible at the property line adjacent to residential at 3 feet above ground level;**
 - 3. Lighting fixtures shall be oriented and/or shielded so as not to create glare on abutting properties; and**
 - 4. The Planner may modify lighting standards if such modifications are deemed necessary and appropriate for the use and surrounding area and help meet the intent of the standard.**
- U. Carts and their accessory items visible from the street shall be kept in good repair and be maintained in a safe and clean condition in compliance with the following:**
- 1. Carts shall not have missing siding, skirting, or roofing.**
 - 2. Carts shall not have more than 10 percent of any side experiencing rust, peeling paint, corrosion or other deterioration.**
 - 3. Carts shall not have components or attachments in disrepair in a manner that causes an unsafe condition.**
 - 4. Tents and canopies associated with the carts shall not have:**
 - a. Tears in the tent/canopy material that exceed 6 inches.**
 - b. Mold on the material.**
 - c. A lack of anchoring.**
 - d. Broken or non-functioning supports.**
- V. Mobile units shall not have any internal floor space available to customers.**
- W. Mobile Unit Food and Beverage Carts shall not exceed 26 feet in length.**
- X. Structures used to provide shelter to customers shall only be tents, canopies and similar**

rigid shelter structures. This does not preclude the use of awnings attached to and supported by a mobile unit or umbrellas designed for café or picnic tables. All canopies, tents and other rigid structures erected on Mobile Unit Food and Beverage Cart sites shall comply with Building Code anchoring and engineering standards and Fire Code standards.

Section 153.051 (17) Agreements, Bonding and Assurances.

17. Agreements, Bonding and Assurances.

- A. Construction plans.** Construction drawings certified by a licensed civil engineer prepared on 24" x 36" base material showing in detail all improvements required to be constructed including, but not limited to, streets, curbs and gutters, storm sewers, sanitary sewers, water distribution system, street tree locations, street lights and monuments, shall be submitted to the city engineer who shall examine the same prior to conditional approval of the final map by the Planner. Upon finding that the drawings conform with applicable city codes and other construction requirements for such improvements and are in accord with sound engineering principles and practices, the engineer shall submit the said plans to the Planner for approval. No alteration or change of the construction drawings shall be made by the developer or the city without the express mutual consent of both parties. No construction shall be started prior to approval of said plans and specifications by the Planner. On completion of the construction the developer shall submit to the city engineer a complete set of "as built" drawings, in the manner prescribed by law.
- B. Improvement procedures.** In addition to other requirements, subdivision or development improvements installed by the developer shall conform to the requirements of this section and improvements standards and specifications adopted by the city, and where there is no requirement or specification expressly set forth in this code or adopted by the city relating to any such improvement or part thereof, the developer shall have the right to employ the standards and specifications prepared by the American Public Works Association. The improvements shall be installed in accordance with the following procedure:
 - 1.** Work shall not begin until plans have been checked for adequacy and approved by the city. To the extent necessary for evaluation of the subdivision or development proposal, the plans shall be required before the approval of the final plat.
 - 2.** Work shall not begin until the city has been notified in advance. If work has been discontinued for any reason for a period of one year, it shall not be resumed until the city has been notified.
 - 3.** Improvements shall be constructed under the inspection and to the satisfaction of the city. The city may require changes in typical sections and details if unusual conditions arise during the construction to warrant the change in the public interest. The city reserves the right to:
 - a.** Require the developer to provide supervision of the improvements by a qualified engineer, or

b. Require the developer to deposit three percent of the anticipated construction costs to be applied to the retention of a supervising engineer. Said deposit shall be applied to the cost of the supervising engineer; if the cost exceeds three percent the developer shall pay the additional; if it is less than the three percent a refund will be made to the developer. When the developer's engineer performs the inspection, a certification of construction inspection shall be issued with the "as built" drawings.

4. All underground utilities, sanitary sewers, and storm drains installed in streets shall be constructed prior to the surfacing of such streets. Stubs for service connections for all underground utilities and sanitary sewers shall be placed to such length as will obviate the necessity for disturbing the street improvements when service connections are made. Storm sewers that are required as a result of a drainage study prepared by a registered professional engineer, shall be installed by the developer.

5. A reproducible map showing all public improvements as built shall be filed with the city upon completion of said improvements.

6. "As built" drawings of all improvements constructed within the development. Said drawings shall define the exact location of all underground utilities and surface drainage as they were constructed. The location of such utilities shall be determined by the developer at the time of construction and independent of the utility company's records. When utilities cross permanent structures such as sidewalks or curbs, the location of the utility shall be indicated on the permanent structure.

Section 153.051(17) will be reorganized for better sequence flow.

Section 153.051(17) (D). Performance Bond.

Section 153.053 (4)(A)(2)(a & b) – (HC Signs in opening table differ from the narrative. Table limits On-building signs at 3 signs of 40 square feet each whereas the narrative allows 3 signs of 120 square foot each. This is a per side standard. There is no CC zone in the table; however, the narrative equals HC and should be added to that column). PC recommends that both be equalized at a maximum of three signs with no more than 120 foot aggregate.

The parking construction and dimensional of standards of the Parking Section 153.054 should be clarified to include non-subsidary uses such as commercial parking lot for used cars, etc..

Section 153.054 (10) (D) (1)

Except in Floodway or Floodplain zones, areas used for standing vehicles and required for maneuvering of vehicles in all residential, commercial, or industrial zones shall have surfaces of asphalt, concrete, brick or other permanent, durable, dustless surfaces maintained adequately for all weather use (excluding oil-matte surfaces). **In Flood zones**, permeable surfaces are encouraged. All such areas shall be so drained as to avoid standing water and flow of water across sidewalks, walkways and adjacent properties.

Section 153.054 (13)(C) New retail, office, institutional development and other commercial uses shall provide at least one bicycle parking space for each retail, office and institutional development, and provide a minimum of one bicycle parking space for every 10 motor vehicle parking spaces regarding the off-street parking lot and parking structures. ~~These spaces shall be sheltered.~~

Section 153.054 (13)(I) Location and Design. Bicycle parking shall be conveniently located with respect to both the street right-of-way and at least one building entrance (e.g., no farther away than the closest parking space) either on the sidewalks or in specially constructed areas such as pedestrian curb extensions. All bicycle parking spaces shall be located in close proximity to the use they are intended to serve, shall be located no more than 50 feet from a well-used entrance, and shall have direct access to both the public right-of-way and the main entrance of the principal use. Inverted "U" style racks or ribbon racks are recommended. Bicycle parking shall not interfere with pedestrian passage, leaving a clear area of at least 36 inches between bicycles and other existing and potential obstructions. ~~These spaces shall be sheltered.~~ Bicycle parking should be incorporated whenever possible into building design and coordinated with the design of street furniture when it is provided. Street furniture includes benches, street lights, planters and other pedestrian amenities.

Section 153.055 (10) Dumpster Standards.

A. All ~~existing and~~ proposed dumpsters shall be screened and located in the rear or side access areas, but not in the front of the subject property. Design of the dumpster screen shall be approved by the affected waste disposal provider.

Section 153.055 (12) Development Standards for multi-family, multiple use, commercial and industrial projects and projects which will create or alter a street or roadway, and development for multi-family, multiple use, commercial and industrial projects **proposed on parcels greater than one acre in size.**

(Does the Council wish to require landscape standards on smaller lots, such as "10% of buildable area in landscaping. Public and semi-public developments shall provide an amount of landscaping, which equals 15% of buildable area"?)

Section 153.071 (2) (A) Code Amendments - Notice of hearing.

Notice of time and place of the public hearing before the Planning Commission and of the purpose of the proposed amendment shall be given by the City Recorder in the following manner.

1) If an amendment to the text is proposed, the notice shall be by ~~one~~ publication ***on the City's website and social media outlets, in a press release to local publications known to the City, and posting in three prominent places of public viewing*** ~~in a newspaper of general circulation in the City not less than four (4) days nor more than~~ ***at least*** 10 days prior to the date of hearing. If an amendment to the Zoning Map is proposed, the notice shall be as provided in Section 4 of this Ordinance.

Section 153.071 (2) (D) Public hearing held by council. Notice of the hearing to be held by the Council on the proposed amendment to the Zoning ~~Code Ordinance~~ shall be given as provided in Section ~~35~~ **(2A)**.

Section 153.073 (2) (Does the Council wish to retain the subjective Site Plan Review Objectives as criteria?)

1. Encourage originality, flexibility and innovation in site planning and development, including the architecture, landscaping and graphic design of development.
2. Discourage monotonous, drab, unsightly, dreary and inharmonious design.
3. Conserve the City's natural beauty and visual character and charm by ensuring structure signs, and other improvements are property related to their sites, and to surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to exterior appearances of structures, signs and other improvements, and;
4. Protect and enhance the City's appeal to tourists and visitors, and thus support business and industry and promote the desirability of investment and occupancy in business, commercial and industrial properties.

Section 153.073 (3) (A) (B)

3. Types of Development Requiring Site Plan Review Approval.

A. An administrative site plan review shall be conducted when plans are made in the R-0, C- C, N-C, H-C, L-I, G-I Zone District as described in 153.004(15).

B. A site plan review shall be conducted before the City Planning Commission when plans are made in the R-0, P & S-P, C-C, N-C, ~~H-C, G-I~~, L-I, G-I Zone District:

1. For all new developments, expansion and major modification of existing developments
2. For expansion of an existing structure, which is greater than 50% of the existing structure or greater than 10,000 square feet.

§153.074 NON-CONFORMING USES AND STRUCTURES

A structure or use lawfully occupying a site on the effective date of the original zoning Ordinance dated July 28, 1980, of or amendments thereto, which does not conform to the regulations for the district in which it is located, shall be deemed to be a non-conforming structure or use.

1) DEFINITIONS:

(a) **ALTERATION of a NONCONFORMING STRUCTURE:** A partial change to a structure, not involving enlargement of the external dimensions of the structure.

(b) **ALTERATION of a NONCONFORMING USE:** A change in the characteristics of the use (for example, hours of operation; type of vehicle serviced) but not a change in the use.

(c) **EXPANSION:** Any increase in any external dimension of a structure, or any increase in land area devoted to a use.

(d) **REPLACEMENT OF USE:** The discontinuance of an existing use and commencement of a new use.

(e) **REPLACEMENT OF STRUCTURE:** Removal that exceeds 80 percent of an existing structure and placement of a new structure.

(g) **50% MARKET VALUE THRESHOLD:** ALTERATIONS or EXPANSIONS within any five- year period, of which equals or exceeds 100% of the market value of the structure (as indicated by the records of the County Assessor) at the beginning of the five-year period. The 50% MARKET VALUE THRESHOLD shall not apply to an ALTERATION or EXPANSION for purposes of conformance with the Flood Hazard Overlay Zone.

2) BURDEN OF PROOF: In matters relating to the continuation, alteration, expansion or replacement of a nonconforming structure or use, the applicant bears the burden of proof for establishing:

(a) The current use or structure lawfully existed at the time the applicable zoning requirement went into effect; and

(b) The level of use and/or dimensions of the structure that existed at the time the applicable zoning requirement went into effect.

Standard evidence that a use or structure has been maintained over time may include dated documents such as: building permits, land use approvals, development permits, other governmental permits, utility bills, tax records, assessor records, loan statements, business license, directory listings, published references or other documents deemed admissible by the Planner.

If the regulation, which rendered the structure or use nonconforming, was enacted more than 20 years prior to the time of application, the applicant need only provide evidence or information pertaining to the 20 years immediately previous to application.

As part of the application process, the Planner may require the applicant to submit a site survey or similar information to assist in making these determinations.

3) Non-conforming uses and structures may be continued, subject to the following regulations:

a. Routine maintenance and repairs, **including elevation changes for flood requirement compliance**, may be performed on sites, the structure or use of which is non-conforming.

b. No non-conforming structure or use, shall be moved, altered or enlarged without permission of the Planning Commission unless required by law or unless the moving, alteration or enlargement will be performed in the elimination of the non-conformity.

c. No structure partially occupied by a non-conforming use shall be moved, altered or enlarged in such a way as to permit the enlargement of the space occupied by the non-conforming use, without permission of the Planning Commission.

d. **Notwithstanding the provisions of this section, alteration or expansion of a NONCONFORMING USE OR STRUCTURE shall be allowed if necessary to comply with any lawful requirement.**

4) The Planning Commission may grant an application for ~~a change of use~~ **an alteration, expansion or replacement of a nonconforming structure or use**, filed in accordance with the provisions of this Code ordinance, **only if the nonconforming structure or use is brought into conformance, or**, on the basis of the application and the evidence submitted, they make findings that support the following criteria:

- (a) All proposed new construction will comply with all standards of the zone;
- (b) The request will have no greater adverse impact on neighboring areas than the existing use or structure when the current zoning went into effect, considering:
 - i. A comparison of existing use or structure with the proposed change using the following factors:
 - 1) Noise, vibration, dust, odor, fumes, glare, or smoke detectable at the property line or off-site;
 - 2) Numbers and kinds of vehicular trips to the site;
 - 3) Amount and nature of outside storage, loading and parking;
 - 4) Visual impact;
 - 5) Hours of operation;
 - 6) Effect on existing vegetation;
 - 7) Effect on water drainage and water quality; and
 - 8) Service or other benefit to the use or structure provides to the area.
 - ii. The character and history of the use and of development in the surrounding area.
- (c) The request shall maintain a minimum separation of six feet between structures, and comply with clear vision requirements; and
 - i. Either:
 - 1. The nonconforming structure or use, including the proposed alteration/expansion, preserves the rights of neighboring property owners to use and enjoy their land for legal purposes; or
 - 2. The applicant demonstrates that bringing the structure or use into compliance is either physically impracticable or financially onerous, and that mitigation will be implemented and maintained which will substantially offset the impact(s) to neighboring property owners.
 - ~~A. That the proposed use is classified in a more restrictive category than existing or pre-existing use by the district regulations of this Ordinance. The classifications of a non-conforming use shall be determined on the basis of the zoning district in which it is first permitted, provided that a conditional use shall be deemed to be in a less restrictive category than a permitted use in the same district.~~
 - ~~B. That the proposed use will not more adversely affect the character of the zoning district in which it is proposed to be located than the existing or pre-existing use.~~
 - ~~C. That the change of use will not result in the enlargement of the space occupied by a non-conforming use, except that a non-conforming use of a building may be extended throughout those parts of a building which were designed or arranged for such use prior to the date when such use of the building became non-conforming provided that no structural alterations, except those required by law are made.~~
- 5. If a non-conforming use has been changed to a conforming use, or if the non-conforming use of a building, structure, or premises ceases for the period of one (1) year or more, said use shall be considered abandoned, and said building, structure or premises shall thereafter be used only for uses permitted as a matter of right or as a conditional use in the district in which it is located.

6. If a structure containing a non-conforming use is destroyed by any cause, it may be rebuilt for that use subject to the requirements that, if the structure is not returned to that use within one (1) year from the date of destruction, a future use on the site shall conform to the Ordinance.
7. Nothing contained in this Ordinance shall require any change in the plans, construction, alteration, or designated use of a structure for which a valid permit exists prior to the adoption of this Ordinance and subsequent amendments thereto, except that if the designated use will be non-conforming, it shall be considered a discontinued use if not in operation within one (1) year of the date of issuance of the ~~building~~ **Zoning** permit.
8. ~~The Planning Commission may grant an application for the expansion of a non-conforming use existing at the date of passage of this Ordinance when filed in accordance with the provisions of this ordinance. Permission may be given if, on the basis of the application and the evidence submitted, the Commission makes findings that support the following criteria:~~
 - ~~A. That the proposed expansion will not more adversely affect the character of the district in which it is proposed to be located than the existing or pre-existing use.~~
 - ~~B. That there is public need for the expansion of such use.~~
9. If an existing non-conforming use, or portion thereof not housed or enclosed within a structure, occupies a portion of a lot or parcel of land on the effective date hereof, the area of such use may not be expanded. Nor shall the use, or any part thereof, be moved to any other portion of the property not theretofore regularly and actually occupied by such use. ~~provided, that~~ **Notwithstanding the preceding**, this shall not apply where such increase in area is for the purpose of increasing an off-street parking or loading facility to the area specified in this Ordinance for the activity carried on in the property. ~~; and providing further, that~~ This shall not be construed as permitting unenclosed commercial activities where otherwise prohibited by this Ordinance.
10. A building or structure lawfully occupying a site on the effective date of this Ordinance or amendments thereto, which does not conform to the setback or coverage regulations for the district in which it is located, shall be deemed to be a non-conforming structure and may be continued, subject to the following regulations:
 - A. If a building or structure, in existence on the effective date of this Ordinance and subject to any yard, location or coverage restriction imposed by this ~~Ordinance~~ **Code**, fails to comply with such restriction, such building or structure may be enlarged or altered to the extent that such alteration or enlargement does not itself encroach upon **any** required ~~area of the building or structure that it violated the coverage~~ restriction; ~~but this right shall be subject to all other restrictions contained in this Ordinance.~~
 - B. If a non-conforming structure is destroyed by any cause other than a willful act by the owner(s) or his agent, it may be rebuilt within the foundation and building outlines of that pre-existing structure. **This is** subject to the requirement that, if destruction exceeds **50** percent of its assessed value as indicated by the records of the County Assessor and it is not returned to use within (1) year, a future structure on the site shall conform to this Ordinance. The willful removal or destruction of the structure by the owner(s) or his agent does not entitle the right

to replace the structure to its original form and, hence, any new structure on the property must conform to the lot requirements as specified for the applicable zoning district.

Section 153.076 (2) (A)

- A. The appellant must be an interested party who has participated either orally or in writing in previous Planning Commission proceedings pertaining to the decision under appeal. The appeal must be made within ~~ten (10)~~ **fourteen (14)** days of the written notice of decision of the Planning Commission, in writing to the Tillamook City Council. All appeals shall be made in writing, based on a specific issue about the criteria and/or standards raised during the Planning Commission Hearing, dated and signed by the appellant. Such appeal shall be filed **with the City Recorder** with the appropriate fee listed in §153.004 of this Ordinance within fourteen (14) days after the written notice of decision of the Planning Commission ~~with the City Recorder.~~

Section 153.076 (2)(B)(2)

Appeal Hearings shall be conducted de novo. The City Council shall review ~~only~~ the record of the prior proceeding(s), and may ask for clarification or additional information from the participating parties as it relates to the record. Full disclosure of both parties ~~must be~~ of the issues of concern must have been made at the **staff or** Planning Commission level ~~and additional issues of evidence or fact shall not be accepted nor considered, nor added to the record.~~